## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:09-CR-178-1H

UNITI	ED STATES OF AMERICA	)	
		)	
		)	
		)	ORDER
	V.	)	OKDEK
		)	
		)	
JODY	EARL ELBERT,	)	
	Defendant.	)	

This matter is before the court on defendant's unopposed oral motion to continue his sentencing hearing. Defendant contends that the Supreme Court's recent decision in Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), calls into question Fourth Circuit precedent concerning the applicability of state convictions as "prior felony offenses" for purposes of the career offender guideline, U.S. Sentencing Guideline § 4B1.1. A panel of the Fourth Circuit recently rejected defendant's argument in United States v. Simmons, No. 08-4475 (4th Cir. Feb. 16, 2011). However, the Fourth Circuit has granted a petition for rehearing en banc in Simmons and recently heard oral arguments in the case.

Inasmuch as the Fourth Circuit is expected to provide clarification in the near future as to the effect, if any, of Carachuri-Rosendo on cases such as this, the court finds that

a continuance is appropriate. Defendant's sentencing hearing is CONTINUED to the court's September 13, 2011, criminal term.

This 10th day of August 2011.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC #31